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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,745	03/18/2004	Tuan Q. Tran	07860004US	5337

7590  
McGuire Woods LLP  
Suite 1800  
1750 Tysons Boulevard  
McLean, VA 22102

04/06/2007

EXAMINER
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PATEL, NIHIR B

ART UNIT	PAPER NUMBER
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3772

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/06/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/802,745

Applicant(s)

TRAN ET AL.

Examiner

Nihir Patel

Art Unit

3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03.07.2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 12, 15-22 and 24-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12, 15-22 and 24-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 1<sup>st</sup>, 2007 has been entered.

### *Response to Arguments*

2. Applicant's arguments with respect to claims **12 and 15-28** have been considered but are moot in view of the new ground(s) of rejection.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims **12, 15-22, 24 and 28** are rejected under 35 U.S.C. 102(b) as being anticipated by Walker et al. (US 6,679,250).

5. As to **claim 12**, Walker teaches an apparatus that comprises a hollow body (see **figure 1**; **the top part of the body is chamber 10**; **the bottom part of the hollow body is the container 25**); a connection port proximate the bottom of the hollow body (**the distribution cap is defined as the connection port**); a vent **47** proximate the top of the hollow body (see **figures 1, 4a and 4b**; **column 5 lines 55-65**); configured to receive ambient air upon patient's inhalation; a

Art Unit: 3772

nebulizer inlet and a nebulizer outlet proximate the bottom of the hollow body (see column 5 lines 30-45); a baffle at least partially disposed within the hollow body, such that the baffle 32 is a barrier and wherein the hollow body and the baffle define an airflow path having portions parallel to one another through an interior of the hollow body (see figure 1; column 5 lines 40-50); wherein the drug delivery mouthpiece 12 is structured and arranged such that the patient's inhalation generates an air flow that allows the air flow path defined by the hollow body and the baffle to deliver a medicament to the patient (see figure 1 and column 5 lines 1-5; 65-67 and column 6 lines 1-5).

6. As to claim 15, Walker teaches an apparatus wherein the baffle includes a substantially planar member disposed between an intake flow path and a delivery flow path (see figure 1).
7. As to claim 16, Walker teaches an apparatus wherein the connection port is configured to attach and detach to a chamber (see figure 1).
8. As to claim 17, Walker teaches an apparatus wherein the baffle is configured to protrude into the chamber connected to the connection port (see figure 1).
9. As to claim 18, Walker teaches an apparatus wherein the baffle is configured to direct an airflow to an intake flow path out of the hollow body and into the chamber connected to the connection port, and the baffle is configured to direct an airflow toward a delivery flow path from the chamber connected to the connection port into the hollow body (see figure 1).
10. As to claim 19, Walker teaches an apparatus that further comprises a delivery conduit arranged proximate the top of the hollow body (see figure 1).
11. As to claim 20, Walker teaches an apparatus wherein the conduit includes an exhaust outlet 11 (see figure 1).

12. As to **claim 21**, Walker teaches an apparatus wherein the exhaust outlet is selectably sealable (**see figure 1**).
13. As to **claim 22**, Walker teaches an apparatus wherein the exhaust outlet includes a one-way valve (**see figure 1**).
14. As to **claim 24**, Walker teaches an apparatus that further comprises a delivery conduit arranged between the top of the hollow body and the bottom of the hollow body (**see figure 1**).
15. As to **claim 25**, Walker teaches an apparatus wherein the vent is sealably configured (**see figures 1, 4a and 4b; column 5 lines 55-65**).
16. As to **claim 26**, Walker teaches an apparatus wherein the nebulizer is configured to aerosolize a substance (**see the summary of the invention**).
17. As to **claim 27**, Walker teaches an apparatus wherein the substance includes medicament (**see the summary of the invention**).
18. As to **claim 28**, Walker teaches an apparatus wherein the vent is configured to exhaust air upon the patient's exhalation. (**see figures 1, 4a and 4b; column 5 lines 55-65**).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3772

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Art Unit 3772

Nihir Patel

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4/2/07